The Arbitrator on the other hand found that the genus to be derived from the activities described in Exception 6 is that they are "physical activities to which an unusual degree of risk of injury attaches."

In a claim of this nature it is for the claimant to show that the injury has caused the death in the manner provided by the policy. See *Leong Luen Kiew & Anor.* v. *The New Zealand Insurance Co. Ltd.*[1] A policy of insurance is basically subject to the same rules of construction as any other written contract. The words used in it must be given their plain, ordinary meaning but in the context of the policy looked at as a whole and subject to any special definitions contained in the policy – *Jason* v. *British Traders' Insurance Co. Ltd.*[2]

Although the grammatical sense is not the sole or primary method of construing a policy it does in this case give a useful guide as to the intention of the parties. We agree with the learned judge that the word "participation" is important in reading Exception 6. "Death or disablement caused by or consequent upon participation in football" is easily understood but not "death or disablement caused by football". Applying the maxim *noscitur a sociis* to Exception 6 "motor-cycling" referred to in the Exception must therefore be motor-cycling not undertaken in the ordinary sense but motor-cycling in some form of sports or exhibition or competition.

We accordingly dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.; Dulip Singh & Co.*

EUCO INTERNATIONAL SDN. BHD. v. P.F. CHEN

[F.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah F.JJ.) February 6 & April 13, 1984]
[Kuala Lumpur – Federal Court Civil Appeal No. 181 of 1982]

Contract – Guarantee – Whether plaintiff entitled to be fully indemnified in respect of guarantee for overdraft facilities – Resolution of company.

In this case the respondent, a consultant engineer and employee of the company was appointed a director of a company. As director he joined with the other directors to guarantee debts or other liabilities of the company and other connected companies by issuing letters of guarantee. In this case the guarantee was to the Malayan Banking Ltd. for granting overdraft facilities to the company. The overdraft debt was not paid and the bank obtained judgment against the respondent and some of the other directors. The respondent relied on the oral assurance of the shareholders of the companies and a resolution of the appellant company and claimed to be indemnified against all claims. The learned trial judge made a declaration that the respondent was entitled to be fully indemnified in respect of the guarantee. The appellant appealed. It was argued on appeal (a) that the learned Judge was wrong to conclude that there was sufficient evidence from which he could draw the inference that the appellant had agreed to indemnify the respondent on the guarantee either orally or in writing; (b) the learned Judge was wrong in holding that an assurance from a director of a company without more, when acted upon could bind the company; (c) the learned Judge drew a wrong conclusion that the resolution of the company was intended by the appellant to indemnify the respondent in respect of the guarantee issued by him.

Held, the learned trial judge was right in concluding that the respondent was entitled to be fully indemnified in respect of the guarantee.

Cases referred to:

(1) *Hely-Hutchinson* v. *Brayhead Ltd. & Anor.* [1967] 3 All E.R. 98, 102.
(2) *Freeman and Lockyer (a firm)* v. *Buckhurst Park Properties (Mangal) Ltd. & Anor.* [1964] 1 All E.R. 630.

FEDERAL COURT.

G.S. Nizar for the appellant.
Raja Abdul Aziz Addruse for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court): The appellant/1st defendant appealed against a declaration made by the learned Judge on June 23, 1982 that the respondent/plaintiff is entitled to be fully indemnified in respect of a guarantee for overdraft facilities. Out of four grounds of appeal one was abandoned. The first ground is that the learned Judge was wrong to conclude that there was sufficient evidence from which he could draw the inference that the appellant had agreed to indemnify the respondent on the guarantee either orally or in writing. The second ground is that the learned Judge was wrong to hold that an assurance from a director of the company, without more, when acted upon, could bind the company. Lastly, that the learned Judge drew the wrong conclusion that a document

(P.2) was intended by the appellant to indemnify the respondent in respect of the guarantee issued by him.

We would only summarise the salient facts. The respondent is a consultant engineer. He was an employee of Euco Development Sdn. Bhd. (2nd Defendant) which is a subsidiary of Euco International Sdn. Bhd. (appellant). The 3rd, 4th, 5th and 6th defendants are brothers. They own shares in and are directors of the appellant which holds 570,200 shares out of 842,725 shares in the 2nd defendant company. The balance of 221,525 shares are held by Lee Wah Nominees. The plaintiff was appointed director of the 2nd defendant company. He was not a shareholder of either the appellant or the 2nd defendant company. He is also the director of Euco Prefab Sdn. Bhd. and Euco Engineering Sdn. Bhd. which are associated and connected with the 2nd defendant company. They are also the subsidiaries of the appellant.

As director, the respondent was expected, from time to time, to join other directors to guarantee debts or other liabilities of one or more of the companies by issuing letters of guarantee. On January 25, 1967 he joined the 4th 5th and 6th defendants in giving a guarantee (P.1) to the Malayan Banking Ltd for granting overdraft facilities up to $300,000 to the 2nd defendant company. Subsequently, the 2nd defendant company failed to pay the bank on the overdraft facilities for which the guarantee (P.1) was issued. The bank obtained judgment against the respondent, the 4th and 6th defendants on January 7, 1975 in Kuala Lumpur High Court Civil Suit No. 608 of 1971. The respondent has so far paid $250,000 to the bank. Hence he claimed against the defendants to be fully indemnified against all sums paid by him to the bank. He relied on the oral assurance and also on the documentary evidence in the form of P.2 which was signed by the four brothers in the following terms:—

"EUCO INTERNATIONAL LIMITED

We, the undersigned, the Directors of Euco International Limited for the time being pursuant to Article 91 of the Articles of Association, hereby make the following RESOLUTION:

INDEMNITY TO GUARANTORS OF SUBSIDIARY COMPANIES FOR OVERDRAFT AND OR LETTERS OF CREDIT FACILITIES:	RESOLVED that: In consideration of Letters of Guarantee furnished by Messrs. John Eu, Roy Ru, and P.F. Chen to the Bankers of our Subsidiary Companies for overdraft and or letters of credit facilities, we hereby agree jointly to hold ourselves responsible for such Letters of Guarantee and to indemnify the Guarantors for any out of pocket expenses including the sum guaranteed with interest thereon if they are called upon by the Bankers make good such facilities.

Dated this 23rd day of July, 1964.

...
...

Article 91 reads:—

Resolution signed by Directors to be valid.	91. A resolution in writing signed by all the Directors shall be as effective for all purposes as a resolution passed at a meeting of the Directors duly convened, held and constituted. In case any Director is absent from the Federation of Malaya, a resolution signed by all the other Directors shall be valid and effectual."

In support of their contention the appellant cited *Hely-Hutchinson* v. *Brayhead Ltd & Anor.*[1] and *Freeman and Lockyer (a firm)* v. *Buckhurst Park Properties (Mangal) Ltd & Anor.*[2] Reference was also made to "Source-book of Singapore and Malaysian Company Law" by Philip Pillai at page 402, paragraph 4 which states:—

"It should be noted that a single director, unless appointed or held out as a committee of the board or as a manging director or expressly or impledly authorised to act in the matter, is not capable of imposing liability on the company ...".

Although the learned Judge discussed about the oral assurance and understanding he referred to another cogent ground which was relied by the respondent, that is, the documentary evidence (P.2). Here we have a resolution made by four persons in their capacity as shareholders and directors of the appellant. Another point taken is that the guarantee (P.1) was signed on January 25, 1967, about three years after the resolution which was made on July 23, 1964. We do not think this is really material on the evidence. Each case must be decided on its own particular facts. We agree

with the respondent that the facts in our case are quite different from the facts in the cases cited earlier. Much was made of the word "furnished" in (P.2) by the 1st defendant. It was argued that (P.2) is meant to indemnify guarantees issued prior to July 23, 1964. In his evidence 4th defendant mentioned that there were so many guarantees to sign. Every time a guarantee was signed it was backed up with a resolution which contained an indemnity by the company to the individual directors who signed the guarantee. For example, at page 105 of the Appeal Record the word "furnished" was also used in (D.19), an indemnity given by the 2nd defendant company. The word "furnished" could apply to the past or the future. It need not necessarily refer to guarantees already issued. The oral assurance given by the directors has also to be considered. It is the submission of the appellant that this is a matter of construction. It may be useful to refer to (D.19) which was dated April 22, 1966. This resolution was intended to be an indemnity given to the guarantors to sign (P.1). The word "furnished" was also used but the guarantee (P.1) was not given until January 25, 1967.

Where there is ambiguity the court can ascertain the intention. *Odgers* on Construction of Deeds and Statutes 5th Edition, at page 31 reads:–

"Rule II. The intention may prevail over the words used.

Ordinarily, parties use apt words to express their intention: but often they do not. The cardinal rule again is that clear and unambiguous words prevail over any intention, but if the words used are not clear and unambiguous, the intention will prevail. We have seen that the most essential thing is to collect the intention of the parties from the expressions they have used in the deed itself. What if the intention so collected will not square with the words used? The answer is that the intention prevails."

The submission of the appellant is that (P.2) is not confined to guarantees prior to the date of resolution. The facts speak for themselves.

(P.2) is a resolution made pursuant to Article 91 of the Articles of Association of the appellant. The intention is clear. As the learned Judge correctly pointed out at page 112 of the Appeal Record that "it is common ground that the resolution is not to be taken as a personal indemnity from the directors. I agree with counsel that this is the correct view to take – a circular resolution passed under the provisions of the articles of association of a company in the form it takes in (P.2) cannot be said to be a personal indemnity themselves. In this case (P.2) has to have effect as an indemnity from the first defendant company." They may not meet formally in signing (P.2). But it is clear beyond doubt that (P.2) did represent a meeting of minds which is, after all, the essence of a meeting and the passing of a resolution.

The learned Judge has dealt with the matter very carefully, in particular, the evidence of John Eu (4th defendant). He was satisfied that there was no reason for (P.2) to be qualified by the words "prior to the date of (P.2)". We agree with the learned Judge that the real reason for making (P.2) as given by the 4th defendant was to make Richard Eu (3rd defendant) bear his part of the liabilities as he was not a shareholder or director in the subsidiary companies.

For reasons given, we would dismiss the appeal with costs. Deposit to the respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *Abdul Aziz Ong & Co.; Rithaudeen & Aziz.*

SUGUMAR v. KUI CHIN

[A.C.J. (Wan Mohamed J., Mohamad Zain Kinsung and John Majimbun) January 28, 1981]
[Kota Kinabalu – Native Court of Appeal No. 7 of 1980]

Native Law and Custom – Charges of being found together with another person's wife – Appellant embraced Islam – Jurisdiction of Court – Appellant not a native – No sanction of District officer – Native Courts Ordinance, (Cap. 86), s. 5, 6 & 10.

In this case the appellant was found guilty in the Penampong Native Court on two charges (1) found to be sitting together with the wife of the respondent in a car belonging to the respondent's wife at about 12.35 p.m. on July 16, 1980; (2) found together with the respondent's wife in the respondent's house when respondent was not in on July 22, 1980. The appeal of the appellant to the District Officer was dismissed and he appealed to the Native Court of appeal. The appellant and the respondent's wife claimed to have embraced Islam on July 21, 1980. The appellant was not a native.

Held: (1) the mode of inquiry or proceedings in the native court is left entirely in the hands of the adjudicators in accordance with custom or usual practice;